

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0471 CS**

**Controlled Substance Excise Tax**

**For Tax Period: 11/05/93**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Controlled Substance Excise Tax – Imposition**

**Authority:** IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

**STATEMENT OF FACTS**

On November 5, 1993, taxpayer was arrested by the Speedway Police Department and charged with possession of cocaine. On January 5, 1994, the Department assessed the controlled substance excise tax against the taxpayer based on a weight of 32.23 grams of cocaine. Taxpayer protested this assessment.

**I. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or

(3) manufactured;  
in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

(1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 32.23 grams of cocaine.

At the time of his arrest, the taxpayer arrived at the girlfriend's home and was asked by the police if he lived at the residence; he answered "yes" and was subsequently arrested for the dealing of cocaine. The taxpayer did in fact stay at times with the girlfriend but actually resided with his brother at another address. This is verified by the address on his income tax returns for the years in question. The only record that has the taxpayer residing at the girlfriend's address is the Department's own assessment against him. The taxpayer stated that he was working two jobs during this period and visits to his girlfriend were sporadic.

The Department's records indicate that the taxpayer's girlfriend was the only party that was involved in the dealing of cocaine. The taxpayer pled guilty to visiting a common nuisance. At the time of the arrest, the taxpayer signed a rights waiver and stated that he had been present at cocaine transactions, "but tried not to get involved in the deals." The girlfriend testified to this at her trial. The girlfriend's protest of her controlled substance excise tax assessment was denied in Letter of Finding 94-0244.

The taxpayer argues that he never possessed the cocaine in question. At the time of the arrest, three small bags of cocaine were found in the girlfriend's kitchen cabinet and the fourth bag was found in her old billfold located in the girlfriend's kitchen drawer. The cocaine was not found on the taxpayer's person or in any of his personal possessions. The confidential informant identified him as being present during the drug transactions conducted during the investigation but not as an active participant. Since the taxpayer was a frequent visitor to the home rather than an actual resident there he could not have had possession of the cocaine found in his girlfriend's house. Therefore, he does not owe the controlled substance excise tax. The Department notes that it has concluded that the girlfriend was the possessor of the cocaine. See Letter of Finding 94-0244.

### **FINDING**

Taxpayer's protest is sustained. The taxpayer does not owe the controlled substance excise tax for the 32.23 grams of cocaine.